IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 615

[redacted]

DANNY ESCOBEDO,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

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OPINION BELOW.

The opinion of the Supreme Court of Illinois (App. B of Petition) is reported at 28 Ill. 2d 41; 190 N. E. 2d 825.

JURISDICTION.

The jurisdictional requisites are adequately alleged in the Petition.

QUESTIONS PRESENTED.

I. Whether, under the facts as found by the Supreme Court of Illinois petitioner's confession was voluntary or was coerced in violation of the due process of law guaranteed by the Fourteenth Amendment?

II. Whether the denial of counsel during police interrogation, without regard to any other circumstances, bars the use of a confession obtained after such denial—should this Court reconsider its holdings in *Crooker* v. *California*, 357 U. S. 433 and *Cicenia* v. *LaGay*, 357 U. S. 504?

STATEMENT OF THE CASE.

I.

Preliminary Statement.

Petitioner's statement of the facts as required by Rule 23(1)(e) of this Court is unsatisfactory for the reason that the "facts" relied upon by petitioner to support his arguments—especially the argument that the totality of circumstances found in this record show the confession to have been involuntary (Pet. 7-9)—are, in large measure, disputed. In order to rely upon these "facts," which are scattered through both the Statement of the Case (Pet. 3-5) and the Reasons for Granting the Writ (Pet. 8-9), petitioner claims that,

> "This Court, because of the delicate nature of the constitutional determination to be made, is obliged to make its own examination of the record *rather than be bound by the findings of fact of the court below. Spano* v. *New York.*" (Pet. 4-5) (Emphasis added.)

This statement of petitioner is not the law and the opinion of this Court in *Spano* v. *New York,* 360 U. S. 315 is certainly not authority for such a claim. In fact, this Court has repeatedly announced exactly the opposite rule. Mr. Justice Frankfurter once put it this way:

> "Nevertheless, in all the cases that have come here during the last decade from the courts of the various States in which it was claimed that the admission of coerced confessions vitiated convictions for murder, there has been complete agreement that any conflict in testimony as to what actually led to a contested confession is not this Court's concern. Such conflict comes here authoritatively resolved by the State's adjudication.

> Therefore only those elements of the events and circumstances in which a confession was involved that are unquestioned in the State's version of what happened are relevant to the constitutional issue here." *Watts* v. *Indiana*, 338 U. S. 49, 51-52.

This view was affirmed in *Thomas* v. *Arizona*, 356 U. S. 390, 402-403 ("Time and again we have refused to consider disputed facts when determining the issue of coercion") and was reaffirmed by the Court's recent opinion in *Rogers* v. *Richmond*, 365 U. S. 534, 536:

> "In coerced confession cases coming directly to this Court from the highest court of a State in which review may be had, we look for 'fact' to the *undisputed*, the *uncontested* evidence of record." (Emphasis added.)

II.

Petitioner's Erroneous Facts.

We reject the following assertions of "fact" set forth in the Petition for Certiorari for which there is no record support, or upon which the evidence in the record is in dispute.

(1) "He [petitioner] appeared *very exhausted*, according to the police lieutenant, who stated: 'He was nervous, had circles under his eyes and he was upset.' " (Pet. 3-4) (Emphasis added.)

"He was *exhausted*, upset, nervous and had circles under his eyes. All of the foregoing is undisputed in the record." (Pet. 8-9) (Emphasis added.)

Nowhere in the record is there any testimony to support the assertion that petitioner was "exhausted" while undergoing police questioning. The only time that word was mentioned was *in a question* during the cross-examination of Lieutenant Flynn:

"Q. Now, you said that Danny Escobedo told you

that he had been—you say he appeared to be very exhausted?

A. He was nervous, he had circles under his eyes and he was upset." (Abst. 110.)[1]

(2) "According to the testimony of petitioner Officer Fred Montejano spoke to him in Spanish (A40). Petitioner further testified that Montejano promised him that he would not be prosecuted if he made a statement, and further promised him that he and his sister could go home and would be used only as witnesses against one Benedict DiGerlando, the alleged assassin (A37). Montejano, petitioner also testified, spoke to him as a friend of his brother's and stated, 'Benny is Italian and there is no use in a Mexican going down for an Italian' (A40)." (Pet. 4.)

All of these specific assertions were met with specific denials on the part of Officer Montejano (Abst. 24, 27, 28, 70) and as the Supreme Court of Illinois recognized in its opinion, "In any event, the officer denied making the promise and the trier of fact believed him." *People* v. *Escobedo*, 190 N. E. 2d 825, 827.

(3) "After all of the foregoing transpired, petitioner *reluctantly* dictated a court-reporter statement to an Assistant State's Attorney shortly before midnight (A39)." (Pet. 4) (Emphasis added.)

There is no record support for the assertion that the formal confession was given "reluctantly".

(4) "He [petitioner] was therefore unaware that the pre-trial statement being solicited could be self incriminating. Rather he thought it was merely a witness statement to be used against DiGerlando." (Pet. 6.)

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1. Record references are to the Abstract filed by Petitioner in the Supreme Court of Illinois.

There is no record support for this statement.

(5) "And, when all of these were still insufficient to cause him to give any statement, he was finally induced to make a statement accusing another as the assassin by a promise that he and his sister would be released and that his statement would only be used against the assassin." (Pet. 9.)

There is no record support for this statement, and as discussed under point (3) above, it was specifically denied by Montejano (Abst. 28, 70).

III.

The Facts.

Petitioner's brother-in-law, Manuel Valtierra, was murdered in the backyard of his home around midnight on the evening of January 19, 1960 (Abst. 76, 79). Following the murder, petitioner was arrested at approximately 2:30 A. M. on January 20, 1960 and taken to the Fillmore station for questioning. He was not handcuffed, and after he denied all knowledge of the crime he was released at approximately 5:00 P. M. that evening (Abst. 36), apparently because his lawyer had obtained a writ of habeas corpus for his release (Abst. 23). Thereafter, according to the lawyer, he and petitioner conferred daily (Abst. 23). Sometime around January 27 or 28, 1960 petitioner's lawyer, Warren Wolfson, told him that if he "was arrested at any time to tell the officers in a nice way that I was sorry but could not talk to them until I had the advice of my lawyer." (Abst. 42.) Between January 20 and January 30, 1960 Officer Fred Montejano questioned petitioner on the street but did not take him into custody when petitioner refused to make a statement (Abst. 25).

On January 30, 1960, at approximately 7:45 P. M., a man by the name of Benedict DiGerlando was in police custody

and told them that petitioner had killed Valtierra (Abst. 29-30). Petitioner was thereupon re-arrested at approximately 8:30 or 9:00 P. M. that same evening and while being driven to police headquarters at 11th and State Streets he was informed of DiGerlando's statement. Petitioner replied that he would like to hear DiGerlando say it to his face (Abst. 55, 57).

After his arrival at headquarters, petitioner was questioned by Officer Montejano and other officers (Abst. 24, 27, 28, 56-57). After again denying DiGerlando's accusation, Montejano and Officer O'Malley brought him into the room where DiGerlando was being held. Petitioner then accused DiGerlando of doing the shooting (Abst. 69, 133-135).

At around 10:15 P. M. Deputy Chief of Detectives Flynn talked to petitioner in the presence of officers Sullivan and McNulty, and petitioner told him that "he wasn't going to be the fall guy, that a fellow by the name of Benny DiGerlando was the one that had shot his brother-in-law." (Abst. 32.) Petitioner told Flynn that he had agreed with his sister to get rid of Valtierra and that he had procured DiGerlando to do the killing while he drove the get-away car (Abst. 102-104). Flynn then questioned DiGerlando and had petitioner brought into DiGerlando's presence for a few questions (Abst. 108, 110-111).

The State's Attorney's office was then notified and Assistant State's Attorney Cooper, with shorthand reporter Donald Flannery, arrived at headquarters and took a detailed confession from petitioner (Abst. 59-65, 144-150), which he refused to sign on February 1, 1960 at the State's Attorney's office "on the advice of counsel." (Abst. 213-214.)

While petitioner was being questioned on the night of January 30, 1960 at police headquarters, attorney Warren

Wolfson arrived and asked to see him (Abst. 15-16). He was told by Chief Flynn that petitioner was then being questioned, that he had been in the building only a short time, and that he could see petitioner when the police had finished their questioning (Abst. 120-121). Around 11:00 P. M. Wolfson saw petitioner through an open door in the Homicide Bureau and waved to him. Petitioner waved back to Wolfson (Abst. 171). Petitioner testified that after he was in custody an hour or so he saw his attorney, that his attorney made a motion to him, and that he interpreted the motion to mean that he shouldn't say anything to the police and that the lawyer wanted to talk to him (Abst. 54-55).

ARGUMENT.

I.

THE CONFESSION WAS VOLUNTARY.

We examine first the question of whether the *undisputed* facts in this record show petitioner's confession to be involuntary or coerced. This Court has said that a resolution of that question depends upon a "review of the circumstances under which the confession was made" and the conclusion is to be drawn from the "*totality* of this course of [police] conduct." (*Payne* v. *Arkansas*, 356 U. S. 560, 562-567.) The Supreme Court of Illinois is in agreement:

> "The question of whether a confession is voluntary depends upon the circumstances under which it was taken and no single factor is determinative. Thus, in *People* v. *Hall*, 413 Ill. 615, 624, we said: 'The effect of detention and questioning in coercing a confession, it seems to us, would vary in every instance, depending upon the place and length of time, the manner and extent of the questioning, and primarily upon the individual being questioned. Age, education, experience and emotional characteristics could make questioning coercive in one case, innocuous in another.' * * * The basic inquiry is whether or not the confessions in question were voluntary. The determination of this question depends not upon any one factor, but upon the totality of all the relevant circumstances." *People* v. *Nemke*, 23 Ill. 2d 591, 599-600.

When the allegations of promises of immunity and persuasion by Officer Montejano are put aside as disputed and disbelieved, both by the trial court and the Supreme Court of Illinois, it is clear that there is not a shred of evidence in this record to support the claim of involuntariness. The following factors are relevant.

A.

Age.

In this case petitioner was 22 years of age at the time of his arrest and confession. He was two years older than the defendant in *Cicenia* v. *LaGay*, 357 U. S. 504 where this Court held the confession voluntary, and considerably older than defendants in previous cases where this Court has overturned confessions as involuntary largely because of the tender age of the person being interrogated. Compare *Haley* v. *Ohio*, 332 U. S. 596 (age 15) and *Gallegos* v. *Colorado*, ... U. S. ....., 8 L. Ed. 2d 325 (age 14). This factor, therefore, does not contribute to any showing of coercion. *Thomas* v. *Arizona*, 356 U. S. 390, 401.

B.

Education.

The record in this case is silent concerning the extent of petitioner's formal education. The trial judge, however, made this specific finding which was relied upon by the Supreme Court of Illinois in its determination that the confession was voluntary:

> "I was impressed with this defendant's intelligence . . . he certainly is not ignorant by a long stretch of the imagination. He is pretty keen. . . ." (Abst. 73.)

C.

Maturity and Emotional Characteristics.

The record is largely devoid of any evidence on this point, but we note that petitioner was married and the father of a child (Abst. 179). Heavy reliance is placed in the Petition on evidence that when petitioner was questioned by Lieutenant Flynn he was "upset, nervous and

had circles under his eyes." (Pet. 8.) Flynn testified, however, that when he asked petitioner *why* he "appeared to be so nervous and agitated" petitioner told him that he had not slept well in over a week *because* of his part in the Valtierra killing (Abst. 102). This testimony confirms an important point made recently by the Supreme Court of New Jersey. In *State* v. *Smith,* 161 A. 2d 520, 546, that court said:

> "An interrogation, no matter how conscientiously conducted, is naturally bound to be a tense occasion and to evoke apprehension, nervousness and a sense of pressure, no matter what the situation, which will be heightened in a person who knows he is guilty by consciousness of guilt and fear of the legal penalty. It must be recognized that it is not this kind of normal stress, fear and pressure which can make the questioning unfair and a confession involuntary."

D.

Physical Treatment.

There is no claim in this case that petitioner was, at any time, abused or mistreated in any manner while in police custody.

E.

Length and Manner of Interrogation.

Petitioner was arrested at 8:30 or 9:00 P.M. in the evening. He orally confessed to Deputy Chief Flynn at about 10:15 P.M. and repeated his confession in greater detail to an Assistant State's Attorney and shorthand reporter at about 11:30 P.M. Although the questioning is characterized as being of the "relay" type (Pet. 9)—apparently in the hope of evoking memories of the kind of conduct condemned in *Ashcraft* v. *Tennessee,* 322 U. S. 143 and *Haley* v. *Ohio,* 332 U. S. 596—it is clear that the questioning

here was nothing of the sort and that the use of the word "relay" is a loose, and quite impermissible, translation of the admitted fact that petitioner was questioned by more than one police officer.

It is also apparent that when judged by the standards of past confession cases in this Court (*E.g. Spano* v. *New York*, 360 U. S. 315; *Ashcraft* v. *Tennessee*, 322 U. S. 143) the length of the interrogation which produced the confession here was remarkably short—something under two hours. This fact confirms the idea that the confession was, in the last analysis, provoked by the police custody of DiGerlando, his accusation against petitioner ("It seems apparent that the confrontation with DiGerlando precipitated the confession." *People* v. *Escobedo*, 190 N. E. 2d 825, 830), and petitioner's own sense of guilt; that the police were, in this instance, "midwife to a declaration naturally born of remorse, or relief, or desperation, or calculation." (*Culombe* v. *Connecticut*, 367 U. S. 568, 576.) Moreover, the record in this case shows that petitioner had been some 15 hours in police custody just ten days before, and that he did not confess during this period of detention though he had been interrogated. The length and manner of questioning in this case, therefore, could not have contributed to any coercion of petitioner's confession.

F.

The Legality of Arrest and Detention.

Petitioner's arrest on January 30, 1960 was lawful. Benedict DiGerlando, who was then in custody, had accused him of the murder about an hour previously and the arresting officers were aware of this fact. Since it was undisputed that a murder had been committed, DiGerlando's accusation furnished "reasonable ground for believing" that

petitioner was involved (See Ch. 38, § 657 Ill. Rev. Stat., 1959).

Secondly, it cannot be said that detention from 8:30 or 9:00 P.M. to 10:15 or 11:30 P.M. on Friday night—the period of time during which petitioner confessed both orally and in writing—was unlawful or in violation of the Illinois statute which provides that a person arrested without warrant shall be taken "without unnecessary delay" before the nearest magistrate (Ch. 38, § 660 Ill. Rev. Stat., 1959). Petitioner had been taken into custody upon the accusation of a man who was, along with the wife of the murdered Valtierra, being questioned by the same officers at the same time. The police here were "trying to solve a crime, or even to absolve a suspect" (*Spano* v. *New York*, 360 U. S. 315, 323). It is clear that the Supreme Court of Illinois would not hold the detention here to be in violation of the "without unnecessary delay" statute. (*People* v. *Jackson*, 23 Ill. 2d 274; *People* v. *Stacey*, 25 Ill. 2d 258.) Neither illegal arrest nor illegal detention was responsible, therefore, for defendant's confession.

G.

The Failure to Warn of Constitutional Rights.

In this case the police did not tell defendant of his right to keep silent while in police custody before obtaining his confession. Prior to his arrest on January 30, however, and following a 15 hour period of detention on January 20, petitioner had been explicitly told by a lawyer whom he consulted that if he was arrested to tell the police that he could make no statement without the advice of his counsel. This evidence fortifies the conclusion of the Supreme Court of Illinois that his confession did not result from ignorance of the privilege against self-incrimination. *People* v. *Escobedo*, 190 N. E. 2d 825, 830.

H.

The Violation of Right to Counsel Statutes.

The claim is made that certain Illinois statutes relating to the right to counsel were violated by the police in their refusal to permit Attorney Wolfson to see petitioner prior to the completion of questioning (Pet. 6).[2] As we read the opinion of the court below, however, it is not that clear that the police conduct under examination here necessarily violated the statutes. The court said:

> "These statutes[3] show a legislative policy against the police or other public officers insulating a person from his attorney, but it does not follow that the legislature intended that the statutes operate to insulate the person from the police or other public officials." *People* v. *Escobedo*, 190 N. E. 2d 825, 831.

It has not been authoritatively determined, therefore, that the police conduct violated the statutes.

I.

The Denial of Counsel.

The denial of counsel during police questioning is a factor to be considered in determining whether, under the totality of the circumstances, a confession was coerced. (*Crooker* v. *California*, 357 U. S. 433, 437-438; *Haley* v. *Ohio*, 332 U. S. 596; *People* v. *Nemke*, 23 Ill. 2d 591.) We believe that this record is far stronger than that in either *Crooker* or *Cicenia* in demonstrating that lack of counsel during questioning did not contribute to an involuntary statement.

First, in this case petitioner had been released on January 20 after 15 hours of police detention, *during which he*

2. Ch. 38, § 477 Ill. Rev. Stat. (1959); Ch. 38 § 449.1 Ill. Rev. Stat. (1959).

3. Transferred in 1961 to Ch. 38, § 736c and § 736b respectively.

did not confess, through the efforts of his counsel in obtaining a writ of habeas corpus. It would be unrealistic indeed, to assume that after only two hours of detention on January 30, petitioner felt beyond the help of his counsel to obtain his release despite the fact that he knew his counsel was not allowed to see him shortly after his arrest on that night.

Second, according to the testimony of his counsel petitioner conferred with him daily after his first arrest. It is entirely reasonable to presume that during these consultations counsel gave petitioner appropriate advice dealing with police custody.

Third, petitioner himself testified that his counsel had told him to refuse to answer police questions—to tell the police, if he was arrested again, that he was sorry but that he could not answer until he "had the advice of my lawyer." (Abst. 42.)

Fourth, petitioner interpreted a wave or motion to him by his counsel at police headquarters on the night in question to mean that he should not speak to the police and that his counsel wanted to see him (Abst. 54-55).

Those who would bar the use of any confession obtained after a denial of counsel apparently predicate their view upon the idea that the presence of counsel may prevent coercive interrogation and that counsel would certainly inform the prisoner of his privilege against self-incrimination (*Crooker* v. *California*, 357 U. S. 433, 441, 443, *dissenting opinion*; *Culombe* v. *Connecticut*, 367 U. S. 568, 637, 639-640, *concurring opinion*). Under this record, with no evidence of coercion, and clear evidence of knowledge on the part of petitioner of his right to keep silent, the denial of counsel could not have contributed to an involuntary confession.

This discussion, perhaps more extended than the ques-

tion warrants, shows that those circumstances usually associated with confessions which may properly be called coerced because they were obtained under circumstances which exceeded the civilized standards set by this Court in its enforcement of the Fourteenth Amendment are simply not present in this case. The Supreme Court of Illinois found "no reason for disturbing the trial court's finding that the confession was voluntary" (*People* v. *Escobedo*, 190 N. E. 2d 825, 827) and we submit that this decision was correct.

II.

THE HOLDINGS OF THIS COURT IN CROOKER AND CICENIA SHOULD NOT BE RECONSIDERED.

The Supreme Court of Illinois held:

> "The exclusion of a voluntary confession made outside the presence of counsel or the preclusion of effective interrogation by the presence of counsel is a high price to pay for whatever deterrent effect the presence of counsel would have on police abuses. If the police abuse their right to interrogate, the confession will be excluded. * * * Having given due weight to the various considerations involved, we are of the opinion that the right of a person in custody to see and consult with his attorney does not deprive the police of their right to a reasonable opportunity to interrogate outside the presence of counsel." *People* v. *Escobedo*, 190 N. E. 2d 825, 829, 831.

There is no dispute that this holding was correct under the principles announced by this Court in *Crooker* v. *California*, 357 U. S. 433 and *Cicenia* v. *LaGay*, 357 U. S. 504. Petitioner, however, requests the reconsideration of those decisions. We believe they should not be reconsidered for several reasons.

First, the record in this case is not the proper vehicle for such a reconsideration. For the reasons discussed in

Point I(I) above, petitioner was not without the effective assistance of counsel at the police station even though counsel was denied access to him during questioning. He had been released from previous custody through the efforts of his attorney. He had conferred daily with his attorney between January 20 and January 30, 1960, and during the latter part of that period he was given the specific admonition that if arrested again he was to make no statement to the police. He was armed with this advice when arrested on January 30, 1960 and he repeated this advice to the police during questioning. He glimpsed his attorney through an open door during the questioning period and interpreted a gesture or motion made by the attorney as meaning that his previously given advice was still in effect.

Under these circumstances, petitioner had the substance of the assistance of counsel during the period of police custody though the form may have been lacking. Since any *per se* exclusionary rule, which could be the only result of an opinion of this Court overruling *Crooker* and *Cicenia*, would necessarily apply to every person in police custody henceforth, for any length of time, whether young or old, rich or indigent, those who have a phalanx of lawyers pounding at the precinct door and those who have never dealt with an attorney in all their lives, and since such an opinion would produce a most devastating impact upon the ability of the police to solve some of the most serious, difficult and brutal crimes known to our society, we deem this case a most inappropriate one for any reconsideration of the rule announced in those opinions.

Second, it is implied in the Petition that the opinion of this Court in *Gideon* v. *Wainwright*, 370 U. S. 908, overruling *Betts* v. *Brady*, 316 U. S. 455, compels the reconsideration of *Crooker* and *Cicenia* (Pet. 7). The majority opinion in *Crooker*, however, anticipated this argument when it said:

> "But those decisions [*Betts* v. *Brady*] involve another problem, trial and conviction of the accused without counsel after state refusal to appoint counsel for him. What due process requires in one situation may not be required in another, and this, of course, because the least change of circumstances may provide or eliminate fundamental fairness. The ruling here that due process does not always require immediate honoring of a request to obtain one's own counsel in the hours after arrest, hardly means that the same concept of fundamental fairness does not require state appointment of counsel before an accused is put to trial, convicted and sentenced to death." *Crooker* v. *California*, 357 U. S. 433, 441 ft. 6.

The right of an accused to counsel in a capital case which existed at the time of the *Crooker* decision has not been broadened by the opinion of this Court in *Gideon* v. *Wainwright*, 370 U. S. 908. Since the result of that opinion is merely to extend the right of counsel *at the trial* to all felony cases, it furnishes no persuasive rationale for the reconsideration of *Crooker*.

Finally, we believe the reasons which led this court in *Crooker* to refuse to adopt an exclusionary rule based solely upon denial of counsel are as valid today as they were then. To say that the announcement of such a rule would have a "devastating effect on enforcement of criminal law" (*Crooker* v. *California*, 357 U. S. 433, 441) and that the "adoption of petitioner's position would constrict state police activities in a manner that in many instances might impair their ability to solve difficult cases" (*Cicenia* v. *LaGay*, 357 U. S. 504, 509) is not just the protective or fearful cry of the public prosecutor. Such a view commanded the respect of a majority of this Court in 1958. It has been reinforced by the views of those with long and fruitful experience in the field of criminal interrogation.[4] It has

4. Inbau and Reid, *Criminal Interrogation and Confessions*, pp. 204-209 (Williams and Wilkins Co. 1962).

been accepted by distinguished judges of the state courts whose opinions in other areas of the law have long demonstrated their jealous and abiding concern for the rights of those accused of criminal offenses.[5]

One would suppose that petitioner would point out to this Court those instances in which the rule of *Crooker* and *Cicenia* has gone awry since it was promulgated; those cases in which the rule has failed to protect the rights of a defendant. The Petition for Certiorari is silent on this score.

We take pride in the fact that since the opinion of this Court in *Griffin* v. *Illinois*, 351 U: S. 12, no state has done more to advance the rights of the indigent defendant, particularly in relation to the constitutional rights to counsel. Long before the decision in *Gideon* v. *Wainwright*, 370 U. S. 908, Illinois extended the right to counsel to every defendant in a felony case. Beginning on January 1, 1964 the right is extended beyond *Gideon* to misdemeanor cases.[6] And a canvass of the decisions of the Supreme Court of Illinois since *Griffin* will readily demonstrate that a majority of all criminal appeals taken in the State of Illinois today are those in which the defendant proceeds upon a free transcript with the services of appointed counsel who are, for the most part, young, and who are, always, competent and dedicated members of the bar of our state.[7]

We in Illinois believe in the constitutional right to counsel and we enforce it far beyond the minimum standards of federal due process. We do not believe that this right encompasses the total abolition of all interrogation of criminal suspects—fair as well as unfair. We do not believe,

5. See e.g., *People* v. *Garner*, 367 P. 2d 680, 693-699 (*concurring opinion* of Traynor, J.).

6. See § 113-3 (a), (b) of the Illinois Code of Criminal Procedure of 1963.

7. Petitioner's counsel in this case is an outstanding example.

therefore, that the opinions of this court in *Crooker* v. *California*, 357 U. S. 433 and *Cicenia* v. *LaGay*, 357 U. S. 504 should be reconsidered.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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